

Attorney Docket No.: J3715(C)
Serial No.: 10/550,622
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REMARKS

Line 1 of claim 1 has been amended to change "comprising" to "consisting essentially of". Additionally the claim has been amended to describe the silicone pressure sensitive adhesive emulsion as an emulsion that, prior to addition to the hair treatment composition, is a mixture of a silicone pressure sensitive adhesive and a hydrocarbon-containing non-silicone organic solvent, said mixture having been emulsified in water using one or more surfactants. See, for example, page 3, lines 21 to 22 wherein the application notes "The term organic solvent relates to solvents that do not contain a silicone" and page 10, lines 6 to 20:

The silicone PSA emulsion can be prepared by mixing the silicone PSA in a suitable organic solvents to give a dispersed phase. It is advantageous if this dispersed phase comprises 20 to 80% by weight of the silicone pressure sensitive adhesive. The PSA/solvent mixture is emulsified in water using one or more surfactants. The preferred surfactants are anionic or non-ionic surfactants, especially a blend of ionic and non-ionic surfactants.

Preferred organic solvents include ethyl acetate and especially hydrocarbons. Preferred hydrocarbons include heptane, hexane and particularly preferred is isododecane).

Additionally, claim 1 has been amended to specify the composition as further comprising propellant and being in the form of a hair styling mousse. See for example, claim 7, as well as page 30, lines 4 to 7 and page 31, lines 1 to 5. With this clarification to claim 1, claims 7 and 14 have been cancelled without prejudice. Claims 4 and 5 have been amended to maintain consistency with the phrase "hydrocarbon-containing-non-silicone organic solvent" of amended claim 1 and to specify such solvent as being selected from the group consisting of heptane, hexane and isododecane.

Attorney Docket No.: J3715(C)
Serial No.: 10/550,622
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New claim 15 reads on a hair treatment composition consisting of a hair conditioning agent; a silicone pressure sensitive adhesive emulsion as described in claim 1; propellant; carrier; optionally, hair styling polymer; optionally, one or more additional ingredients selected from the group consisting of preservatives, fatty alcohols, pH adjusting agents, colouring agents, perfume oils, chelating agents, plasticizing agents, and surfactant in addition to the surfactant present in the silicone pressure sensitive adhesive emulsion. See, for example, pages 10 to 17, page 18, lines 4 to 6, page 19, lines 9 to 23, and page 33, lines 5 to 14. New claim 16, dependent on claim 15, specifies that if hair styling polymer is present, it is present in an amount below 0.01 wt% of the hair treatment composition. See page 10, lines 24 to 31. New claim 17 follows the format of claim 13, but depends from claim 15.

Entry of the above described amendments is respectfully requested.

Claims 1, 3-5, 7, 8, 10, 11, and 13 stand rejected under 35 U.S.C. § 102(e) as anticipated by Clapp et al. (US 6,887,859) and Dhamdhere et al. (US 6,787,130), with a non-statutory obviousness type double-patenting rejection also being applied against the subject claims over Dhamdhere et al. and copending Application No. 10/550623. These rejections are respectfully traversed.

Clapp et al. is directed to topical compositions to absorb sweat and sebum from the skin. In particular, Clapp et al. is directed to the use of a pressure sensitive adhesive fluid in topical compositions that include moisture-absorbent solids to provide compositions which are disclosed as providing adhesion and maintenance of such solids on the skin over prolonged periods of time. Clapp et al. characterizes the adhesion characteristics of its compositions by a value therein termed the

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"Average Wear Index" which is a test it describes as an indirect measure of the extended wear properties of its compositions. See for example column 2, lines 26 to 35:

It is therefore an object of the present invention to provide a body powder formulation that provides moisture and other fluid absorbing benefits over prolonged periods of time. It is a further object of the present invention to provide such a formulation from a liquid composition that is less messy to apply than conventional dry powders and has desirable skin feel and cosmetic benefits. It is still a further object of the present invention to provide such a liquid composition by combining a suitable liquid carrier, an adhesive fluid, and certain moisture-absorbent solids, to provide an extended wear product.

See also the Summary of the Invention:

It has been found that the topical liquid compositions of the present invention provide effective delivery and deposition of fluid-absorbent solids onto the skin, while also providing adhesion and maintenance of those solids onto the skin over prolonged periods of time. These compositions when applied topically provide absorption of sweat and sebum from the skin, and thus provide effective removal of such fluids from the skin. These topical fluid-absorption benefits can be maintained over prolonged periods of time, and thus provide topical fluid-absorption benefits throughout the day after just a single application. These compositions can also provide other extended wear benefits as well as the effective delivery of fluid-absorbent solids, all from a liquid or rather than a powder base matrix.

It is respectfully submitted that the primary focus of Clapp et al. is on providing a composition that, when applied to skin and allowed to dry, deposits fluid absorbent solids on the skin in an adhered fashion. The patent does include a very few references to hair applications, for example, in the section under Product Form it states:

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The topical compositions of the present invention can be formulated in any of a variety of product forms, so long as the product forms contain the essential ingredients as defined herein. These products are typically and preferably in liquid or semi-liquid form, more preferably in liquid form. Non-limiting examples of such product forms include soft solids, lotions or creams, aerosol sprays, aerosol foams, pump sprays, and so forth.

These products can be prepared and used as either leave-on, rinse-off or wipe-off formulations, but are preferably prepared and used as leave-on formulations. These products can be formulated to deliver any of a variety of personal care or cosmetic functions in addition to the fluid-absorbing functions, including personal care or cosmetic functions associated with color or other cosmetics, shampoos or other hair care products, skin cleansing products, topical pharmaceuticals, topical skin active compositions, or any other product form that provides for topical delivery of any suitable skin active agent or benefit.

Other places where "hair" appears are: the sentence in column 9 that runs from lines 55 to 63 (discussing fluid absorbent solids), the discussion at column 12, lines 36 to 49 of solid particles (other than the fluid-absorbent solid particles) that are disclosed as optional additional ingredients, and the first two sentences of column 14 (which, so as to be understood in context, herein follows through line 24):

The topical compositions of the present invention are applied topically to the desired area of the hair, skin or nails in an amount sufficient to provide effective delivery of the desired fluid-absorbent solid to the applied surface. The compositions can be applied to the desired area of the hair, skin or nails and allowed to remain as a leave-on product, or the compositions can be rinsed away with water or wiped off of the applied surface. The compositions are preferably used as leave-on applications, i.e., not rinsed or wiped off within 6 hours, preferably with 24 hours, of application.

The topical composition of the present invention includes leave-on compositions that are applied to the skin to provide sebum and/or sweat absorption, more preferably once daily, especially after showering or bathing.

The topical compositions of the present invention can also be applied to the body, wherein the composition is preferably not applied to the head or neck, for the purpose of absorbing perspiration wetness and/or sebum from

Attorney Docket No.: J3715(C)
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the skin after application, preferably over an extended period of time of at least about 4 hours, preferably from about 6 hours to about 24 hours.

The patent is, however, devoid of any exemplification of hair or nail care products.

While Applicants concede that Clapp et al. discloses the application of a fluid absorbing material to hair as a treatment to absorb sebum, it is respectfully submitted that **the combination of fluid absorbing material and pressure sensitive adhesive is not desirable in a leave-on styling mousse**. In particular, in a leave-on styling mousse formulation, Clapp et al.'s combination of fluid absorbing material and pressure sensitive adhesive can detract from combability, clean feel, body, and other sensory properties needed for styling mousse applications, as well interfere with the hold or film-forming properties of the mousse itself. Moreover, used at the levels required for sebum absorbing applications, the fluid absorbing material would be expected to have a significant anti-foaming effect in a mousse composition. **Significantly, neither hair styling products generally, nor mousses in particular, are disclosed or suggested as applications for the compositions disclosed by Clapp et al.**

Applicants have found that the incorporation of the subject pressure sensitive adhesive as a particular pre-formed emulsion, i.e., a mixture of adhesive and hydrocarbon-containing organic solvent that has been emulsified in water using one or more surfactants, provides mouse compositions wherein the tendency of the pressure sensitive to hydrolyze is reduced, and the styling performance, in particular curl retention, is improved. Nothing in Clapp et al. or Dhamdhare et al. discloses or suggests the addition of the pressure sensitive adhesive in the form of the subject pre-formed emulsion, or the benefits obtained thereby in mousse applications. As

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amended, the subject claims are believed to overcome both the rejection under 35 USC 102(e) over Clapp et al. as well as the rejections over Dhamdhere et al.

Regarding the rejection over copending Application No. 10/550623, Applicants note that this rejection is provisional only. Both applications are under prosecution and their claims subject to possible amendment. Upon the indication of allowable subject matter in the instant application, Applicant reserves the right to revisit the merits of such rejection, compare claims and, if necessary, to file a terminal disclaimer over same.

In view of the comments set forth above reconsideration and allowance of the subject claims as hereby amended is respectfully requested.

Respectfully submitted,


Karen E. Klumas
Registration No. 31,070
Attorney for Applicant(s)

KEK/sa
(201) 894-2332